Commercial Contract Financing

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Commercial Contract Financing

CPT Kayes,

I need your assistance in understanding what can be done ASAP to
secure purchase of the fire trucks from the United Arab Emirates
For the Civil Defense Forces (Fire Department). It's my
Understanding that the vendor is willing to sell the Coalition
Forces the fire trucks and is asking for a down payment of an
estimate 10% – 15% before they are willing to ship the truck which
seems reasonable given that the total package excluding shipping is
$790,000.

Owen Widmer
Major, United States Army
426th Civil Affairs Battalion

Commercial Contract Financing

Overview

- Governing Directives
- Applicable Definitions
- Policy, Prohibitions, and Authorizations
- Security for Advance Payments
- Contract Financing Terms
- Provisions and Clauses
- Payment of Commercial Financing Payments
- Unusual Contract Financing
- Scenarios
- Summary

Commercial Contract Financing

Governing Directives

- FAR 32 – Contract Financing Payments
- DFARS 232 – Contract Financing
- FAR Part 2 - Definitions of Words and Terms
- FAR Part 12 - Acquisition of Commercial Items
- FAR 28.105-1, Advance Payment Bonds
- Agency Regulations

Commercial Contract Financing

Definitions

- “Contract financing payment” means an authorized Government disbursement of monies to a contractor prior to acceptance of supplies or services by the Government. (Includes advance payments)

Commercial Contract Financing

Definitions

- “Commercial advance payment,” …, means a payment made before any performance of work under the contract. These payments are contract financing payments for prompt payment purposes (i.e., not subject to the interest penalty provisions of the Prompt Payment Act)

Commercial Contract Financing

Policy

- It is the responsibility of the contractor to provide all resources needed for performance of the contract. Thus, for purchases of commercial items, financing of the contract is normally the contractor's responsibility. However, in some markets the provision of financing by the buyer is a commercial practice. In these circumstances, the contracting officer may include appropriate financing terms in contracts for commercial purchases when doing so will be in the best interest of the Government.

Commercial Contract Financing

Prohibition

- Unless agency regulations otherwise permit, contract financing shall not be provided for purchases made under the authority of Part 13.

Commercial Contract Financing

Authorizations

- Commercial interim payments and commercial advance payments may be made under the following circumstances --
  - Contract item financed is commercial supply or service;
  - Contract price exceeds the simplified acquisition threshold;
  - CO determines it is appropriate/customary in the commercial marketplace to make financing payments for the item;
  - Form of contract financing is in the best interest of Gov't
  - Adequate security is obtained
  - Prior to any performance of work, aggregate of commercial advance payments shall not exceed 15% of the contract price

Security for Government Financing

- 10 U.S.C. 2307(f) and 41 U.S.C. 255(f) require the Government to obtain adequate security for Government financing. The contracting officer shall specify in the solicitation the type of security the Government will accept. If the Government is willing to accept more than one form of security, the offeror shall be required to specify the form of security it will provide. If acceptable to the contracting officer, the resulting contract shall specify the security

Security for Government Financing

- Subject to agency regulations, CO may determine the offeror's financial condition to be adequate security
  - Assessment of the contractor's financial condition shall consider both net worth and liquidity.
  - Offeror must agrees to provide additional security should that financial condition become inadequate as security
  - Offeror's financial condition must continue to provide adequate security to cover any amount of unliquidated contract financing

Commercial Contract Financing

Security for Government Financing

- Other forms of security
- Lien against work in progress, contractor's plant, inventory
- Irrevocable letter of credit ***from federally insured financial institution***
- Bond from surety ***that gaurantees repayment of unliquidated contract financing***
- Guarantee of repayment form individual/corporation connected by significant ownership to the contractor
- Title to contractor identified asset

Commercial Contract Financing

Contract Financing Terms

- Considered in conjunction with/pursuant to market research
- Specified by CO in solicitation
  - Not a factor in evaluation of proposals
  - Alternative financing terms will not to be accepted
  - Failure to use CO specified contract financing doesn’t render offer nonrepsonsive

Commercial Contract Financing

Contract Financing Terms

- Offeror Proposed
  - Each offeror may propose contract financing terms
  - CO must determine which terms in best interest of the Government
- Incorporated into resulting contract

Commercial Contract Financing

Solicitation Provisions/Contract Clauses

- 52-212-4(i), Payment
- CO constructed solicitation provision and contract clause if contract provides for contract financing
- 52.232-31, Invitation to propose finance terms (offeror proposed commercial contract financing)
- 52.232-29, Terms for Financing of Purchases of Commercial Items

Commercial Contract Financing

Payment of Contract Financing Payments

- CO responsibility to review, approve, and transmit contract financing requests to payment office
- Approval shall specify amount to be paid, necessary contractual info, and accounts to be charged for payment

Commercial Contract Financing

Unusual Contract Financing

- Any contract financing arrangement not in accord with the requirements of agency regulations or this part is unusual contract financing and requires advance approval in accordance with agency procedures. If not otherwise specified, such unusual contract financing shall be approved by the head of the contracting activity.